IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/2213, 2247 & 2248/2010-EX[DB]

(Arising out of Order-in-Original No. 64/Commissioner/GZB/2009 dated 24/12/2009 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad)

M/s International Electron Devices Ltd. (in E/2213/2010),

Shri Sudhir Kumar, Managing Director (in E/2247/2010) &

Shri L.S. Bisht, General Manager (in E/2248/2010), **Appellants**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri R. Santhanam, Advocate for Appellants
Shri Sandeep Kumar Singh, Deputy Commissioner (AR) &
Shri Pawan Kumar Singh, Supdt, (AR) for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 24/05/2018
Date of Pronouncement : 29/06/2018

FINAL ORDER NOs-**71270-71272 / 2018**

Per: Anil G. Shakkarwar

Above stated three appeals are arising out of common impugned Order-in-Original No. 64/Commissioner/GZB/2009 dated 24/12/2009 passed by Commissioner of Customs, Central Excise & Service Tax, Ghaziabad, therefore, they are taken together for decision.

2. The brief facts of the case are that the appellants-assessee were engaged in the manufacture of different Automobile components, falling under Chapter Nos.84, 85, 82, 72, 87 & 39. They were also availing facility of Cenvat credit. The manufacturer-appellants factory was visited by Central Excise officers on 06.03.2006. The Officers also conducted verification of raw materials as well as final products. A panchnama was also drawn on 06.03.2006, the drawal of said panchnama continued upto Morning of 07.03.2006. The panchnama stated that the officers found shortages of raw materials weighing 8855.398MT, as compared with the book balance maintained in pro-forma RG 23A. The officers also recorded statements of various persons. On 06.03.2006 statement of Shri Ashok Kumar, Authorized Signatory was recorded. On 07.03.2006 statement of Shri L.S. Bisht, General Manager was recorded. Another statement dated 29.05.2006 of Shri L.S. Bisht was recorded. The inquires were also made from main suppliers of raw material such as M/s Shanti Steel Syndicate, M/s Gurukripa Enterprises, M/s Shushila Steels, M/s Gangotri Steel Syndicate & M/s Dev Steels, all located at Ghaziabad. On the basis of said investigations show cause notice dated 02.03.2007 was issued to all the three appellants. In the said show cause notice it was stated that the manufacturer appellants voluntarily debited Rs.3,94,53,986/- in their Cenvat account on 20th March, 2006. It was alleged in the

said show cause notice that the raw materials on which said amount of Cenvat credit was availed were clandestinely removed without payment of Central Excise duty. Further, it was stated in the said show cause notice that manufacturer-appellants also deposited Rs.1 crores through TR-6 Challan on 07.03.2006, as advance deposit for the purpose of payment of penalty. Through the said show cause notice the manufacturer appellant was called upon to show cause, as to why Cenvat credit of Rs.3,94,53,986/- should not be recovered from them and why penalty under Rule 26 of Cenvat Credit Rules should not be imposed on the other two appellants. The appellants requested for cross examination of departmental officers and panch witnesses. However, the cross examination of Panch witnesses Shri Baboo Kumar Chindalia S/o Shri Ram Phal and Shri Om Kumar S/o Shri Suraj Mal was conducted on 07.12.2009. The appellant submitted reply to the show cause notice and submitted before the Original Authority that Shri Om Kumar had deposed in his cross examination that he was not called by the officers for witnessing the search on 06.03.2006 and that he was stopped by the officers when he was carrying iron scrap in a trolley near the store room and that he further deposed that the raw materials were not weighted in his presence nor he was shown any weighment slips affixed to the coils. They further submitted that Shri Babboo Kumar after showing the panchnama dated 06.03.2006 deposed that those documents were not prepared in his presence and also deposed that he was not shown any paper related to weighment of iron coils. The appellants submitted before the original authority that the weighment was not carried out and pleaded that said panchnama is not sustainable and a result there were no evidence to establish that the officers found shortage of raw materials weighing 8855.398 MT. The Original Authority on the basis of statements recorded before Central Excise Officers confirmed the demand and imposed equal penalty on the manufacturer appellants and further imposed penalty of Rs.1 crores each on the other two appellants under Rule 26 of Central Excise Rules, 2002. Aggrieved by the said order, all the appellants are before this Tribunal.

3. Heard the learned Counsel for the appellants. Learned Counsel has submitted that both panch witnesses have stated during their cross examination that there was no weighment done in their presence and therefore, the content of the panchnama that physical weighment was carried out and shortage was deducted is not supported by the said cross examination. He has further submitted that the allegation in the show cause notice is that the shortage was due to clandestine removal, cannot be sustained by revenue merely on the basis of record of statements of difference persons and that it was incumbent on the revenue to bring on record

positive and conclusive evidence to prove by proper investigation and evidence in regard to the persons to whom the alleged clandestinely removed raw materials had been sold, when and how transported, how was the consideration received and utilized without accountal. They have also relied on the following decisions in support of their contention:-

- *CCE Vs Brims Products (2011) 271 ELT 184 (Pat.);*
- *Union of India Vs MSS Foods Ltd. (2011) 264 ELT 165 (MP);*
- *CCE Vs Vishwa Traders Pvt. Ltd. (2013) 287 ELT 243 (Guj.);*
- *Mahavir Polyplast Pvt. Ltd. Vs CCE (2013) 287 ELT 139 (Tri.);*
- *CCE Vs Silvertone Papers Ltd. (2013) 287 ELT 478 (Tri.);*
- *Kothari Pouches Vs. CCE (2001) 135 ELT 531 (Tri.);*
- *Kuber Tobacco Products Ltd. Vs CCE (2013) 290 ELT 545 (Tri.);*
- *Pan Paragh (I) Ltd. Vs CCE (2013) 291 ELT 81 (Tri.);*
- *CCE Vs Pentagon Steels Pvt. Ltd. (2013) 288 ELT 271 (Tri.);*
- *Oudh Sugar Mills Ltd. Vs UOI (1978) 2 ELT 172 (SC);*
- *Hindustan Machines Ltd. Vs CCE (2013) 194 ELT 43 (Tri.-Del.);*
- *Rawalwasia Ispat Ltd. Vs CCE (2005) 186 ELT 465 (Tri.-Del.);*

4. Heard the learned A.R. for revenue who has supported the impugned Order-in-Original.

5. Having considered the rival contentions and on perusal of records, we find that the translation of cross examination is submitted on page nos.259 to 272 of appeal paper book. On

going through the content of the said translation of cross examination, it is very clear that the Central Excise officers did not conducted any physical weighment of raw materials. Therefore, it is not establish that officers found shortage of 8855.398 MT of raw materials. We, therefore, do not find the impugned Order-in-Original to be sustainable.

6. Therefore, we set aside the same and allow all the appeals filed by the appellants.

(Pronounced in Court on-29/06/2018)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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